

REMARKS

This is in full and timely response to the Office Action mailed on January 21, 2009.

Claims 75-79 and 82-84 are currently pending in this application, with claim 75 being independent.

No new matter has been added.

Reexamination in light of the amendments and the following remarks is respectfully requested.

Entry of amendment

This amendment *prima facie* places the case in condition for allowance. Alternatively, it places this case in better condition for appeal.

Accordingly, entry of this amendment is respectfully requested.

Prematureness

Applicant, seeking review of the prematureness of the final rejection within the Final Office action, respectfully requests reconsideration of the finality of the Office action for the reasons set forth hereinbelow. See M.P.E.P. §706.07(c).

If the allowance of the claims is not forthcoming at the very least and a new grounds of rejection is made at least against the claims, then a new non-final Office Action is respectfully requested at least for the reasons provided hereinbelow.

Rejections under 35 U.S.C. §101

This rejection is traversed at least for the following reasons.

Page 2 of the Office Action contends that:

Claims 75-84 recite a method, not within the technological arts. A process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Neither of these requirements are met by the claims, therefore the claims does not qualify as a statutory process and do not positively recite the subject matter that is being transformed, by identifying the material that is being changed to a different state. *In re Bilski* Fed. Cir. 2008, 2007-1130. The transformation of data into a draft for bill of lading is not transforming underlying subject matter as no article or materials are transformed.

In response, while not conceding the propriety of this rejection and in order to advance the prosecution of the present application, the features of claim 81 have been wholly incorporated into claim 75. Accordingly, no “further search and/or consideration” of amended claim 75 is believed to be required.

Claims 76-79 and 82-84 are dependent upon claim 75. Claim 75 is drawn to a method of drafting a bill of lading, said method comprising the steps of:

obtaining vessel schedule information, said vessel schedule information being transportation schedules from cargo consignors;

performing pre-booking by sending a designated outgoing vessel schedule to a physical distribution trader, said designated outgoing vessel schedule being a transportation schedule selected from said vessel schedule information;

obtaining booking information from a physical distribution trader site, said booking information including a booking number and said designated outgoing vessel schedule;

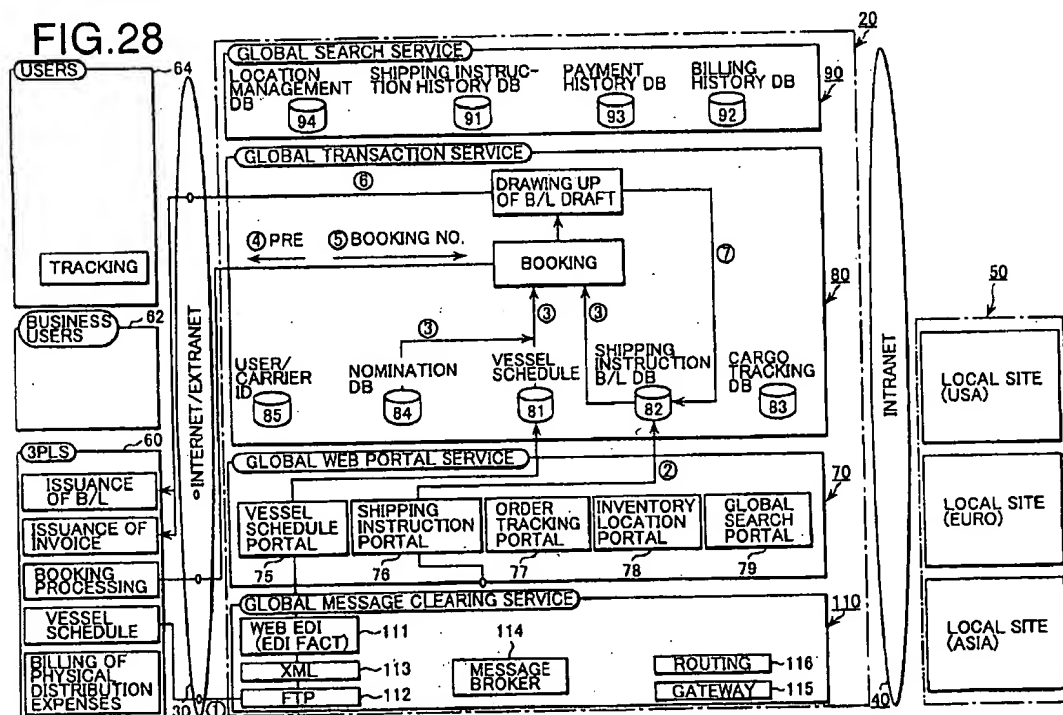
confirming said booking information;

preparing a draft for bill of lading, said draft for the bill of lading including said booking information and physical distribution basic six information,

wherein, in the step of obtaining the vessel schedule information, a portal site obtains said vessel schedule information from said physical distribution trader site,

wherein an interface is between said portal site and said physical distribution trader site, said interface being a communication network line.

Figure 28 of the specification as originally filed is provided hereinbelow.



U.S. Patent Application Publication No. 2003/0101106, the publication document for the present application provides in paragraph [0196] that:

[0196] Actually, until the ship is loaded with the cargo that has been consigned to a consignee (physical distribution trader) by a consignor, information is exchanged between the consignor and the physical distribution trader several times. Accordingly, if the information owned by each party is fully written on the bill of lading to fill a corresponding item of the bill at every chance of the information exchanges, the bill of lading is completed only by the filling of the number of the bill (B/L number) and the data of the issue of the bill by the shipping company when the ship is loaded with the cargo. Next, an embodiment of the issuance processing.

The Courts have generally excluded laws of nature, physical phenomena and abstract ideas from the patent protection of 35 U.S.C. §101. *Diamond v. Diehr*, 450 U.S. 175, 185, 209 USPQ 1, 7 (U.S. 1981).

However, the opposite of an “abstract idea” is something having a concrete existence, tangible, and put to a practical use. *Ex parte Lundgren*, 76 USPQ2d 1385, 1404 (Bd. Pat. App. & Int. 2005)(Barrett, J., concurring in part and dissenting in part).

Recall that claim 75 is drawn to a method:

wherein, in the step of obtaining the vessel schedule information, a portal site obtains the vessel schedule information from the physical distribution trader site,

wherein an interface is between said portal site and the physical distribution trader site, the interface being a communication network line.

The Courts have held that the transformation of data can produce a tangible result. *NTP Inc. v. Research In Motion Ltd.*, 75 USPQ2d 1763, 1794 (Fed. Cir. 2005).

At the very least, the step of “obtaining the vessel schedule information” is an example of a physical process step that transforms one physical, electrical signal into another. *Arrhythmia Research Technology Inc. v. Corazonix Corp.*, 22 USPQ2d 1033, 1038 (Fed. Cir. 1992).

Moreover, claims 75-79 and 82-84, under the broadest reasonable interpretation, could require the use of a computer. *In re Comiskey*, 499 F.3d 1365, 84 USPQ2d 1670, 1680 (Fed. Cir. 2007).

Accordingly, these claims recite statutory subject matter.

Rejections under 35 U.S.C. §112

While not conceding the propriety of these rejections and in order to advance the prosecution of the present application, the have been amended in accordance with the manner suggested within the Office Action.

Rejections under 35 U.S.C. §103

Paragraph 8 of the Office Action indicates a rejection of claims 21 and 23 under 35 U.S.C. §103 as allegedly being unpatentable over “The Path Of Least Resistance” (Hoffman) in view of U.S. Patent Application Publication No. 2002/0178034 (Gardner), U.S. Patent No. 6,085,172 (Junger), and Official Notice.

This rejection is traversed at least for the following reasons.

Hoffman - Page 76 of Hoffman arguable discloses that “IDS is a consortium of 12 Dutch motor carriers that collectively have been in business for more than 500 years.”

Page 76 of Hoffman arguable discloses that *“once the shipper makes the booking, all the partners in the PIE-IDS network are alerted and a fixed transit time schedule is set.”*

However, the Office Action fails to show that the *“fixed transit time schedule”* of Hoffman is from the IDS partners.

- ***Thus, Hoffman fails to disclose, teach, or suggest a step of obtaining vessel schedule information, said vessel schedule information being transportation schedules from cargo consigners.***

Additionally, the Office Action fails to show where within Hoffman that there is disclosed that a portal site obtains the vessel schedule information from a physical distribution trader site.

- ***Thus, Hoffman fails to disclose, teach, or suggest that:***
 - *in the step of obtaining the vessel schedule information, a portal site obtains said vessel schedule information from said physical distribution trader site,*
 - *an interface is between said portal site and said physical distribution trader site, said interface being a communication network line.*

Moreover, the Office Action fails to show where Hoffman discloses the selection of a transportation schedule.

- ***Thus, Hoffman fails to disclose, teach, or suggest a step of performing pre-booking by sending a designated outgoing vessel schedule to a physical distribution trader, said designated outgoing vessel schedule being a transportation schedule selected from said vessel schedule information.***

The Office Action fails to show where within Hoffman that there is disclosed either a booking number or a designated outgoing vessel schedule.

Instead, the Office Action concludes without providing any objective evidence that *shipper provides a complete shipping invoice that inherently has a number or other identifier construed to be a "booking number"* (Office Action at page 4).

In response, such a retrospective view of any alleged "inherent" feature ***is not a substitute for some teaching or suggestion supporting an obviousness rejection.*** *In re Rijckaert*, 28 USPQ2d 195 5, 1957 (Fed. Cir. 1993).

Instead, a patentable invention, within the ambit of 35 U.S.C. §103 ***may result*** even if the inventor has, in effect, merely combined features, old in the art, for their known purpose, without producing anything beyond the results inherent in their use. *In re Sponnoble*, 160 USPQ 237, 243 (CCPA 1969).

Here, the Office Action ***fails*** to provide any objective evidence for showing that a complete shipping invoice inherently has a number or other identifier construed to be a "booking number".

Incidentally, page 4 of the Office Action ***readily admits*** that Hoffman is ***silent*** regarding: providing the shipper specific schedule information and obtaining the shipper's selected schedule; and the booking number, vessel schedule and "basic six information" being on the bill of lading.

- ***Thus, Hoffman fails to disclose, teach, or suggest a step of obtaining booking information from a physical distribution trader site, said booking information including a booking number and said designated outgoing vessel schedule.***
- ***Likewise, Hoffman fails to disclose, teach, or suggest a step of confirming said booking information.***
- ***Similarly, Hoffman fails to disclose, teach, or suggest a step of preparing a draft for bill of lading, said draft for the bill of lading including said booking information and physical distribution basic six information.***

Gardner - Paragraph [0052] of Gardner arguably discloses that *trips are identified by a confirmation number, preferably without generating a ticket.*

Paragraph [0106] of Gardner arguably discloses that retrieve reservation information 222 uses either the ticket number or a system reference number to return the trip information to session context module 112.

However, Gardner **fails** to disclose, teach, or suggest the confirmation number, the ticket number or a system reference number being from a physical distribution trader site.

- *Thus, Gardner **fails** to disclose, teach, or suggest a step of obtaining booking information from a physical distribution trader site, said booking information including a booking number and said designated outgoing vessel schedule.*
- *Likewise, Gardner **fails** to disclose, teach, or suggest a step of confirming said booking information.*
- *Similarly, Gardner **fails** to disclose, teach, or suggest a step of preparing a draft for bill of lading, said draft for the bill of lading including said booking information and physical distribution basic six information.*

Junger - Junger arguably discloses that for a new batch, the manufacturer side computer 230 creates a batch header which includes information identifying the assigned batch number, any customer reference numbers, the return center address, the name and telephone number of a customer contact person, and the status of the batch (e.g., product entry stage, pending approval, approved, declined, RA assigned, etc.) (Junger at column 6, lines 13-19).

If desired, a customer reference number (e.g., a bill of lading number, file number, invoice number, etc.) may be entered for an internal reference to identify the return authorization (Junger at column 6, lines 30-34).

However, Junger *fails* to disclose, teach, or suggest the customer reference number including a booking number and a designated outgoing vessel schedule.

- *Thus, Junger fails to disclose, teach, or suggest a step of obtaining booking information from a physical distribution trader site, said booking information including a booking number and said designated outgoing vessel schedule.*
- *Likewise, Junger fails to disclose, teach, or suggest a step of confirming said booking information.*
- *Similarly, Junger fails to disclose, teach, or suggest a step of preparing a draft for bill of lading, said draft for the bill of lading including said booking information and physical distribution basic six information.*

Alleged nonfunctional descriptive material - Page 5 of the Office Action contends that:

Regarding the use of booking numbers, vessel schedules and "basic six information" on the bill of lading, these differences from the combination above are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The pre-booking, obtaining, confirming and preparing of a bill of lading steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms or patentability, see *In re Gulack*, 703 F.2d 1381, 1385,217 USPQ 401,404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579,32 USPQ2d 1031 (Fed. Cir. 1994).

In response, the Office Action *fails* to show why *the step of preparing a draft for bill of lading* would be the same in the absence of booking numbers and physical distribution basic six information when the draft for the bill of lading of claim 75 *includes the booking information and physical distribution basic six information.*

The Office Action *fails* to show why *the step of confirming said booking information and the step of obtaining booking information from a physical distribution trader site* would be the same in the absence of a booking number and a vessel schedule when the booking information of claim 75 *includes the booking number and an designated outgoing vessel schedule.*

The Office Action *fails* to show why *the step of performing pre-booking by sending a designated outgoing vessel schedule to a physical distribution trader* would be the same in the absence of a vessel schedule when the designated outgoing vessel schedule *is a transportation schedule selected from vessel schedule information.*

The Office Action *fails* to show why *the step of obtaining vessel schedule information* would be the same in the absence of a vessel schedule when the vessel schedule information of claim 75 *is transportation schedules from cargo consigners.*

In this regard, the attempted reconstruction made within the Office Action is merely an attempt to redefine the invention in a manner different than from what is disclosed within the specification and set forth within the claims. Such an attempted reconstruction is without authority under Title 35 U.S.C., Title 37 C.F.R., the M.P.E.P. and relevant case law; such an attempted reconstruction is therefore deemed improper. See M.P.E.P. §2164.08.

Official Notice - Page 6 of the Office Action indicates that the Examiner takes Official Notice that it is old and well known in the art of shipping documents to include the vessel schedule on a document traveling with the item (for example airline tickets contain the flight schedule) to provide information about the booked transport; to include basic six information on a document traveling with the item to provide important shipping information such as mailing address, return address, number of items, names, dates., contents, etc... ; and to use codes or numbers to identify bill of lading.

In response, there is no concession as to the veracity of Official Notice.

Instead, the procedures established by Title 37 of the Code of Federal Regulations expressly entitle the Applicant to an Examiner's affidavit upon request.

Specifically, "when a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons." 37 C.F.R. §1.104(d) (2).

Accordingly, Applicant hereby requests a reference or an Examiner's affidavit to support this officially noticed position of obviousness or what is well known.

Further, note that if this reference or Examiner's affidavit is not provided, the assertions of what is well known must be withdrawn. See M.P.E.P. §2144.03.

Failure to provide any objective evidence to support the challenged use of Official Notice constitutes clear and reversible error. *Ex parte Natale*, 11 USPQ2d 1222, 1227-1228 (Bd. Pat. App. & Int. 1989).

Withdrawal of this rejection and allowance of the claims is respectfully requested.

Extensions of time

Please treat any concurrent or future reply, requiring a petition for an extension of time under 37 C.F.R. §1.136, as incorporating a petition for extension of time for the appropriate length of time.

Fees

The Commissioner is hereby authorized to charge all required fees, fees under 37 C.F.R. §1.17, or all required extension of time fees.

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

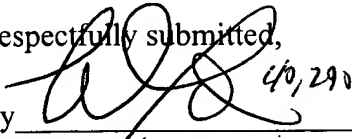
Conclusion

This response is believed to be a complete response to the Office Action. Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers.

For the foregoing reasons, all the claims now pending in the present application are allowable, and the present application is in condition for allowance. Accordingly, favorable reexamination and reconsideration of the application in light of the remarks is courteously solicited.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

Dated: March 10, 2009

Respectfully submitted,

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